

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 182 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

K PATEL CHEMO PHARMA PVT.LTD.

Appearance:

MR MANISH R BHATT for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.R.JAIN

Date of decision: 11/07/96

ORAL JUDGEMENT

At the instance of the Revenue, the following two questions are referred to this Court under Section 256 (1) of the Income Tax Act, 1961 :-

- "1. Whether the Appellate Tribunal is right in law and on facts in holding that if the unpaid

sales tax liability is paid before the due date for filing of return under section 139 (1), addition cannot be made invoking the provisions of section 43 B ?"

2. Whether the Appellate Tribunal is right in law and on facts in directing the ITO to allow depreciation and Investment allowance on the cost of the assets without deducting the amount of subsidy from the cost of the assets ?"

2. So far as question No. 1 is concerned, the question pertains to allowable deduction in view of proviso to section 43 (B) of the Income Tax Act, 1961 which has been inserted with effect from 1st April, 1988.

3. This Court, in the case of CIT vs. Chandulal Venichand, reported in 209 ITR 7 considered the effect of insertion of first proviso to section 43 B of the Act and has held that the proviso is retrospective in operation. Hence, the question referred to this Court is covered by the said decision, and therefore, it is required to be answered against the Revenue and in favour of the assessee.

4. So far as question No. 2 is concerned, the Tribunal decided the controversy following the decision of this Court in the case of CIT vs. Grace Paper Industries Pvt. Ltd. reported in (1990) 183 ITR 591. This case is also covered by the decision of the Apex Court in the case of CIT vs. P.J. Chemicals, reported in 210 ITR 830.

5. Hence, the questions are required to be answered against the Revenue and in favour of the Assessee. Accordingly, we answer both the questions in favour of the Assessee and against the Revenue. This reference is disposed of accordingly with no order as to costs.